

ATTORNEY DOCKET NO. 14114.0325U2
APPLICATION NO. 09/674,195

REMARKS

Claims 1-49 are pending in this application. Claims 10-15, 21-30, and 34-44 are withdrawn from consideration as drawn to non-elected invention. Claims 4, 5, 8, 9, 18, 20, 33, 45, 46, and 49 are canceled herein without prejudice. New claims 50 - 52 have been added. Thus, claims 1-3, 6, 7, 16, 17, 19, 31, 32, 47-48, and 50-52 are under consideration. Support for new claims 50-52 can be found in original claim 1 and at least on page 11, line 3 through page 12, line 5.

Applicants acknowledge with appreciation the opportunity to discuss this case with the Examiner on August 18, 2005. Applicants acknowledge that the Examiner's position regarding the rejection under 35 U.S.C 112, first paragraph, is that the use of open language such as "having" and "comprising" in conjunction with fragments encompasses embodiments not described in the specification and could be cured through the use of closed language. Applicants also note that the Examiner indicated that the use of open language in the claims was acceptable for claims referring to the full open reading frame (ORF) of SEQ ID NO: 1. Applicants have made every effort to incorporate the suggestions of the Examiner in generating this amendment and response to the present Office Action.

35 U.S.C. § 112, first paragraph

Claims 1, 6, 7, 16, 19, 31, and 45-48 are rejected under 35 U.S.C. § 112, ¶ 1, for allegedly containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In particular, the Examiner has rejected claims 1, 6, 7, 16, 19, 31, and 45-48 for the recitation of "fragments" and "comprising" which the Examiner interprets to allegedly include "numerous divergent upstream and downstream regions." Applicants respectfully traverse the rejection. Applicants note that claims 45 and 46 are canceled herein.

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Applicants have amended claims 1, 6, 7, 16, 19, 31, 47, and 48, and added new claims 50-52. Claim 1 has been amended as a markush listing of the nucleic acids described in original claim 1. Claims 1, 6, 7, 16, 19, 31, 47, and 48 have been amended to remove the open ended language of "having" or "comprising" in conjunction with the term "fragments." Applicants note that new claim 50 does not recite "fragments" and new claims 51 and 52 do not recite language such as "having" or "comprising" which can be interpreted as open. Therefore, as amended, the claims cannot be interpreted to include "numerous divergent upstream and downstream regions."

As noted by the Examiner in the telephone interview, nucleic acids comprising the full open reading frame of SEQ ID NO:1 are considered to be described. Thus, claims 1, 50, and 52 which recite the entire SEQ ID NO:1, which includes the open reading frame, in conjunction with the terms "comprising" and "having" is believed to be described in the specification in such a way as to convey to those of skill in the art that applicants were in possession of the claimed invention.

Applicants remind the Examiner that a fragment of a molecule is, by definition, a subpart of that molecule. In the case of a nucleic acid, its fragments can only comprise contiguous nucleotides of the parent molecule. Thus, the genus of fragments of SEQ ID NO: 1 is completely and clearly described by the nucleotide sequence of SEQ ID NO: 1 itself. The specification clearly stipulates that a nucleic acid "fragment" means a "subsequence of the nucleic acid which is of a sufficient size and confirmation to properly function as a hybridization probe, as a primer in a polymerase chain reaction [(PCR)], to code for a polypeptide or polypeptide fragment, or in another manner characteristic of nucleic acids (page 16, lines 18-23)." The reference to fragments in the current claims uses closed language, so there is no issue of undisclosed upstream or downstream sequences. Also, since the genus is further constrained by the requirement that the fragments be *H. capsulatum M antigen-specific*, the genus is well-within the vision of the skilled artisan and does not read on any non-specific or single nucleotide nucleic acids. Applicants believe this rejection to be overcome and respectfully request it be withdrawn.

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Pursuant to the above amendments and remarks, reconsideration and allowance of the pending application is believed to be warranted. The Examiner is invited and encouraged to directly contact the undersigned if such contact may enhance the efficient prosecution of this application to issue.

No fee is believed due; however, the Commissioner is hereby authorized to charge any additional fees which may be required or to credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence and any items indicated as attached or included are being transmitted via facsimile transmission to: Examiner Navarro, Art Unit 1645, (571) 273-8300, on the date indicated below:

Gwendolyn D. Spratt
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8-19-05
8-19-05

Date